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SIPDIS

DEPARTMENT FOR S/WCI:PROSPER, EUR/SCE:KABUMOTO

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TAGS: [KAWC](#) [PREL](#) [KJUS](#) [HR](#)

SUBJECT: ICTY INDICTS NORAC: CROATIA PREPARING FOR CASE  
TRANSFER

Classified By: Poloff Justin Friedman, reasons 1.5 (b) & (d)

1. (C) SUMMARY and COMMENT: On May 25, the ICTY announced the issuance of an indictment against Croatian retired General Mirko Norac for his role in the Medak Pocket case. ICTY Head of Office Thomas Osorio (protect) told us that the Tribunal intends to transfer this case to Croatia for prosecution. Minister of Justice Vesna Skare-Ozbolt told Ambassador Frank that she was concerned about the timing of the indictment but that the GoC was ready to work through the legal issues to ensure the Croatian judicial system was ready to try the case. Although this announcement compresses the time the GoC has to prepare for this first case transfer, we believe that the key players, including the Minister of Justice and the Chief State Prosecutor, will do everything necessary to ensure the Croatian legal system is ready to try this case. END SUMMARY and COMMENT

Norac Indicted  
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2. (C) The May 25 ICTY announcement of an indictment against Croatian retired General Mirko Norac came as a surprise. ICTY Head of Office Thomas Osorio told us on May 24 that he had expected that the judge would not issue the indictment for several weeks. Osorio regretted the timing, as the ICTY on May 21 had just begun the first of a series of joint training seminars with the Ministry of Justice to prepare Croatian prosecutors and judges to handle indictments transferred to Croatia for prosecution under Article 11 bis of the ICTY Statute.

Transfer to Croatia  
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3. (C) Osorio said that the ICTY Office of the Prosecutor had been planning to join the Norac indictment to that of Rahem Ademi and make this case the first one transferred to Croatia. However, as the weekend training seminar had verified, there were several legal issues outstanding that needed to be worked through. The key issue is how to prosecute command responsibility charges absent a corresponding statute in the Croatian Criminal Code valid at the time of the crimes. Osorio believes, as does OSCE Rule of Law Unit Head Mary Wycoff, that there are sufficient elements in Croatian law, including the Yugoslav National Army Military Law (valid in Croatia from 1992 to 1996), to cover command responsibility.

Preparation Timing Compressed  
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4. (C) The problem for the GoC and the ICTY is building a sufficiently strong legal case around the command responsibility issue. The weekend seminar confirmed that this issue remains controversial among Croatian legal professionals. Osorio reported that Croatian judges, led by Supreme Court Justice Damir Kos, will insist on a Constitutional Court ruling in the matter. Osorio had hoped to have much of the summer to build this case, but the early release of the Norac indictment will compress this timing.

Bad Political Timing for GoC  
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5. (C) Minister of Justice Vesna Skare-Ozbolt told Ambassador Frank on May 25 that she was also concerned about the timing of the indictment. The Sabor is scheduled to discuss the ICTY indictments of Cermak and Markac in the next day or two, and the GoC has been working hard to manage the tone of this debate. The release of the Norac indictment would make it more difficult to keep inflammatory rhetoric out of the debate, even if the debate's conclusions have been worked out in advance.

6. (C) Skare-Ozbolt said it would be important at the outset that it be made clear to the public that the Norac case would be transferred to Croatia for prosecution. Osorio told us that there would be no arrest warrant or request for transfer for Norac. However, the ICTY press release issued May 25 makes no mention of these points.

COMMENT

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17. (C) We believe that Minister Skare-Ozbolt, along with State Prosecutor Mladen Bajic, are committed to preparing the Croatian legal system as much as possible to ensure that cases transferred from ICTY are properly handled. Aside from

the legal issues to be resolved, the ICTY Statute 11 bis requires that the Tribunal monitor how these cases are handled, with the option of pulling the trial back to The Hague if the GoC cannot handle its responsibilities. Osorio and Bajic have told us that they want to have a successful first prosecution and are taking steps to ensure a success. The compressed timetable will add to the challenge, but not make it insurmountable.

FRANK

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